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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 181

WELLS LAMONT CORPORATION, A CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR, and
JAMES G. ROGERS, ACTING ADMINISTRATOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

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INDEX.

Subject Index.

	PAGE
Petition for Writ of Certiorari	1
Opinions and Amendment to Opinion Below	2
Jurisdiction	3
Statement of Facts and Matters Involved in This Petition	
Section 2(h) of the Emergency Price Control Act.	4
The Practice of "In-Line" Pricing	5
Petitioner's December 1, 1941, and March 17, 1942, Price Lists	8
Issuance of the General Maximum Price Regulation and OPA's Oral Interpretation	10
Petitioner's Compliance with OPA's Oral Interpretation of the Regulation	11
Petitioner's Complaint in the Court Below	12
Price Administrator's Answer in the Court Below	12
Original Opinion of the Emergency Court of Appeals	14
Petition for Re-hearing	15
The Court's Amendment to its Original Opinion	16
Questions Presented	18
Reasons for Granting the Writ	19
Argument	20
1. The court below has misconceived the nature of the practice and the manner of its operation	20
2. The use of "in-line" pricing does not open the door to "circumvention" or "evasion" of the Regulation or the Act	27
Conclusion	30
Prayer	31
Appendix A	33

Statutes Cited.

Emergency Price Control Act of 1942, as amended (U. S. C. A., Title 50, Appendix):
Section 2(h) (U. S. C. A., Title 50, App. Sec. 902(h)) 4, 12, 14, 15, 16, 18, 21
Section 204(d) (U. S. C. A., Title 50, App. Sec. 924(d)) 3
Judicial Code, Section 240, as amended (U. S. C. A., Title 28, Sec. 347) 3

Regulations Cited.

General Maximum Price Regulation, issued April 28, 1942, (7 Fed. Reg. 3153) as amended 1, 4, 8, 10, 11, 12, 27, 28, 30, 33
Statement of Considerations filed on issuance of G. M. P. R. (OPA Serv., Vol. 1, "General", Page 20,207) .. 28

Other Authorities Cited.

Chester Bowles, Administrator v. Seminole Rock and Sand Co. (decided June 4, 1945), U. S. Supreme Court Case No. 914 19
Rule 38, Paragraph 5(b) of Rules of the Supreme Court (U. S. C. A., Title 28, fol. sec. 354, Cum. An. Pckt. Part) 19
Philadelphia Coke Co. v. Bowles (Em. Apps.—1943), 139 F. (2d) 349 21
Henry Kaelin & Son v. United States (D. C., E. D., N. Y.—1923), 290 Fed. 242 13
In re Minot Auto Co. (CCA 8—1924), 298 Fed. 853 ... 13
First National Bank v. United States (D. C., Mo.—1932), 2 Fed. Supp. 107; affirmed, 65 F. (2d) 536, cert. den. 290 U. S. 652 13
U. S. v. Stinson (1905), 197 U. S. 200 13
O'Brien v. United States (CCA, 7—1931), 51 F. (2d) 674 13
Bouvier's Law Dict., Rawles Ed., 3rd Rev., vol. 3, p. 2650 22
West v. Sun Cab Co., 154 A. 100, 160 Md. 476 22

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable The Justices of The Supreme Court of the United States:

Your petitioner, Wells Lamont Corporation, respectfully petitions for a writ of certiorari to review a judgment and decision of the United States Emergency Court of Appeals. The judgment, entered by that court on May 1, 1945, dismissed petitioner's complaint which was filed, first, with respect to the validity of the provisions of Section 1499.2 of the General Maximum Price Regulation as interpreted by the Price Administrator in their application to petitioner and to others similarly situated in the glove industry, and second, with respect to the validity of the provisions of Amendment 33 to the Gen-

eral Maximum Price Regulation. To the extent that the lower court's judgment and decision relate to the question of the validity of Amendment 33 to the Regulation, they are not involved in this petition for review.

The case was brought by petitioner in the United States Emergency Court of Appeals under the provisions of Section 204(a) of the Emergency Price Control Act of 1942, as amended, on appeal from an order of the Price Administrator* denying petitioner's protest (R., 53). As required by the provisions of the Emergency Price Control Act, the grounds relied upon by petitioner in its appeal to the Emergency Court of Appeals were included among the objections set forth in petitioner's original protest filed with the Price Administrator.

Opinions and Amendment to Opinion Below.

The Price Administrator's opinion accompanying his denial of petitioner's protest is not officially reported, but is found on pages 54 to 63 of the record in this case.

The opinion of the Emergency Court of Appeals, filed at the time of entry of the judgment dismissing petitioner's complaint, is set forth in the record at pages 126 to 129. A petition for rehearing thereafter filed was denied by the court, but the order of denial incorporated an amendment by the court to its opinion as originally rendered. The order of denial and the amendment to the opinion appear in the record at pages 139 and 140. The court's opinion, as originally filed and as thereafter amended, is not yet in the official reports.

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* The order was issued in the name of James G. Rogers, Acting Administrator.

Jurisdiction.

The judgment of the Emergency Court of Appeals was entered on May 1, 1945 (R., 130). The petition for rehearing was denied by the court on May 28, 1945.

Jurisdiction is invoked under Section 204(d) of the Emergency Price Control Act of 1942, as amended,* and under Section 240 of the Judicial Code, as amended (U. S. C. A., Title 28, Section 347).

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* Section 204(d) of the Emergency Price Control Act of 1942, as amended, provides:

> "Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in Section 240 of the Judicial Code, as amended * * *." (U. S. C. A., Title 50, App. Sec. 924(d).)

STATEMENT OF FACTS AND MATTERS INVOLVED IN THIS PETITION

Section 2(h) of the Emergency Price Control Act.

The judgment, of which this petitioner seeks a review, involves the question of the proper construction and application of the provisions of Section 2(h) of the Emergency Price Control Act (U. S. C. A., Title 50, App. Sec. 902(h)).

As originally adopted Section 2(h) reads as follows:

> "The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act." *

The provisions of Section 2(h) of the Act are involved in connection with petitioner's claim that the provisions of Section 1499.2 of the General Maximum Price Regulation are invalid and contrary to law, as they have been interpreted by the Price Administrator in their application to petitioner and to others similarly situated in the glove industry. It is petitioner's claim that those

* This is the way Section 2(h) read at the time the regulation questioned by petitioner—the General Maximum Price Regulation—was issued by the Price Administrator on April 28, 1942. Section 2(h) of the Act was amended on July 1, 1944, by the Stabilization Extension Act of 1944, so that the balance of the Section, following the word "industry," now reads:

> "* * * *or changes in established rental practices*, except *where such action is affirmatively found by the Administrator to be necessary* to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act." (The words added by the amendment are in italics.)

provisions of the Regulation, as so interpreted by the Price Administrator, are invalid and contrary to law in that they exclude the use of the practice of "in-line" pricing, traditionally and customarily employed in the sale and distribution of gloves by petitioner and by others similarly situated in the glove industry, thereby violating the provisions of Section 2(h) of the Act.

The Practice of "In-line" Pricing.

"In-line" pricing is a practice which has been in general use in the glove industry for more than 15 years. The practice has arisen and the use of it has become necessary in order to meet problems which are peculiar to the glove industry. These problems involve the fixing of the hundreds of different prices for the products manufactured and distributed by those engaged in the glove business. These glove-products are sold at comparatively very low prices. The price ranges for the various models of gloves are relatively narrow; and a large number of "styles" may fall within each such price range (R., 5, 6, 94).

Scores of "styles," among the hundreds which have been developed in the industry, are identical models of gloves except for minor differences in their construction. These substantially identical styles carry minor differences in their selling prices. They are identified on the published price-lists by their "style" or "stock" numbers (R., 6, 23-37, 1941 Catalog, R., 38).

The hundreds of styles developed in the glove industry have traditionally been separated into several classes of gloves. Each class embraces the styles of gloves which are identical models except for very minor differences in the construction of those styles.

A general glove group—such as the Full Leather, Leather Palm, Rubber, Jersey, or Cotton Flannel group—may include several of such separate classes of substantially identical styles. (R., 6, 94-95).

The minor differences between the selling prices of the styles within each class have been standardized on the basis of a fixed differential for each of the minor differences in the construction features of those styles. From the time of its inception and throughout the period of its use, the differential representing a particular construction feature remains, in the main, at the same cent-amount. In its application, the difference between the selling price of the style of glove which carries that feature and the style of glove which is identical except for that feature, is exactly equal to the cent-amount of that differential (R., 6, 7). That cent-amount ordinarily remains exactly the same over a period of years even though, during that period, the selling prices of *both* gloves may be very substantially increased or decreased.

The same general method applies where more than one feature is involved. For example, where there are two features, the difference between the selling price of the style of glove which carries both features and the identical model which does not, is exactly equal to the sum of the cent-amounts of the two differentials applicable to those features (R., 6-7).

In the case of this petitioner, in the year 1941 it manufactured and sold more than 400 "styles" of gloves. During March of 1942—when materials were less available and labor conditions were becoming difficult—more than 300 styles were being manufactured and offered for sale by petitioner. The highest priced glove which petitioner offered in its March 1942 price list was $1.02-1/12 per pair

($12.25 per dozen pair). The gloves offered in that price list ran as low as 8⅛¢ per pair (97½¢ per dozen pair) (R., 2, 31-37).

Among the gloves offered by petitioner and others in the industry, the standard type of "Cotton Flannel" model, embracing a class of substantially identical glove styles, furnishes a typical example. A minor difference in construction between styles in this class involves weight of material: The 8-ounce glove is customarily used as a base for "in-line" pricing of the same style of glove in other weights. Accordingly, heavier weights in that model are priced by adding the "per-ounce" differential, fixed under "in-line" pricing methods, to the base 8-ounce glove price; and lighter weights in the cotton-flannel class are priced by subtracting the fixed "per-ounce" differential from the base 8-ounce glove price (R., 6, 95, 1941 Catalog, R., 38).

A typical example showing the standardized difference in price between two otherwise identical styles within a single class of glove—reflecting a minor difference in another construction feature—is found in two "Leather Palm" styles:

(Taken from "Schedule A," R., 45.)

Style No.	Subject Glove Description	Style No.	"In-Line" Base Glove Description
3132	Leather Palm Band	3130	Leather Palm Band* (plus Knuckle strap and continuous heel)

"In-line" pricing in the glove trade had established a customary price differential of an additional 25¢ per dozen pair (2-1/12¢ per pair) for the knuckle strap feature and 25¢ per dozen paid for the continuous heel feature of style

* Inadvertently described as "Leather Palm Gauntlet" in Schedule A (R., 45).

3130. The "in-line" price of the subject glove, style 3132, is accordingly reached in this way:

March 17, 1942 list price for one dozen pairs style 3130 ("in-line" base glove)	$5.75
Deduct customary per-dozen price differential of 25¢ for knuckle strap and 25¢ for continuous heel feature	.50
"In-line" price for one dozen pairs style 3132, as shown on March 17, 1942 price list	5.25

(R., 7.)

The *selling* prices of both styles had increased approximately 10% from the selling prices quoted for them in the next preceding price list, which was published on December 1, 1941. Yet the 25¢ differential for the knuckle-strap and the 25¢ differential for the continuous heel features remained the same in *both* price lists (R., 45).

Petitioner's December 1941 and March 1942 Price Lists.

Petitioner issued a quarterly price list for its gloves on December 1, 1941. Commitments and contracts of sale at those prices were made during December and January for almost the entire period, ending March 17, 1942, during which the December price list was to have been in effect (R., 2, 93).

On March 17, 1942—more than a month *before* the issuance of the General Maximum Price Regulation—petitioner issued to its customers a new price list on all of its gloves (R. 2, 94, 22, 30).

Substantial increases in its labor, material and other manufacturing costs during the latter part of 1941 necessitated increases in petitioner's March 17, 1942 prices over those previously published—that is, over the prices published in its December 1, 1941 price list (R., 2-3, 94). This increase in the published selling prices of all of petitioner's

gloves amounted to approximately 10%. "In-line" pricing methods were employed with respect to the maintenance of the fixed differentials, reflecting the various minor differences in construction features, between the substantially identical styles within each class of gloves. As a result of the application of those methods and in spite of the general increase of approximately 10% in the selling prices of all gloves in all classes, the cent-amount of each such differential for each minor construction feature remained, in the main, exactly the same (R., 44-51).

Deliveries of petitioner's gloves continued into the month of March at December prices under commitments and contracts made during December, 1941, and January, 1942. In addition, deliveries of some styles in each separate class of substantially identical styles were made before the end of March, 1942, at the prices quoted in the March 17, 1942 price list on orders taken immediately following its issuance. And the increased price quoted in the March 17, 1942 price list for each style of glove was correctly fixed, in its relation to the prices quoted for all other styles in the sale class, according to customary and traditional "in-line" pricing methods in general use in the glove trade (R., 3, 95).

As has been admitted by the Price Administrator in this proceeding, it is essential to the conduct of their business that petitioner and like manufacturers in the industry use "in-line" methods in pricing the gloves sold and distributed by them (R., 6, 94). Accordingly, unless petitioner's March 17 published prices could be used as its ceiling prices, established on the basis of deliveries completed during March and at March 17 prices of one or more styles within each separate class of substantially identical styles, it would be forced to roll back *all* of its prices to those published in its December 1941 list. The selling prices quoted in its December list were approximately 10% lower than

its March prices; and as has been established by petitioner's sworn evidence, such a roll-back would have resulted in severe hardship and have made it difficult, if not impossible for petitioner to continue in the glove business (R., 3).

Issuance of the General Maximum Price Regulation and OPA's Oral Interpretation.

The General Maximum Price Regulation* was issued and became effective April 28, 1942. The provisions of Section 1499.2 of that Regulation, the validity of which is questioned by petitioner, are quoted in Appendix A at the conclusion of this petition (pages 33 to 36). Certain amendments made since the issuance of the Regulation are included in the quoted provisions but they are irrelevant to the point in issue here.

As stated above, the General Maximum Price Regulation was issued more than a month after publication of petitioner's March 17, 1942 price list. Thus, it was issued more than a month after the selling prices in that list had been fixed and the "in-line" differentials had been applied in the determination of those selling prices.

Subsequently, on June 3, 1942, "in-line" pricing was discussed by petitioner's president in a conference held in Washington with the Acting Chief of the Work Clothing Unit Division of the Office of Price Administration and with the Acting Chief's assistant. Those OPA officials issued an oral interpretation to the effect that petitioner's use of "in-line" pricing in determining the ceiling prices for its gloves—that is, the selling prices quoted in its March 17, 1942 price list—was proper under the provisions of Section 1499.2 of the Regulation in their application to petitioner (R., 3, 4; also, the former Acting Chief's Affidavit, R., 20 and 21).

* 7 Fed. Reg. 3153.

Petitioner's Compliance With OPA's Oral Interpretation of the Regulation.

Commencing with the effective date on May 11, 1942, of the General Maximum Price Regulation, petitioner had sold its gloves at not exceeding its March 17, 1942 prices—that is, at not exceeding the ceiling prices found by the OPA officials in their June 3, 1942 oral interpretation to have been proper. And petitioner continued so to sell its gloves for more than a year after June 3, 1942, without any change in the oral interpretation being made or communicated to petitioner, either orally or in writing, by the OPA (R., 4).

On or about August 18, 1943, petitioner was advised through the Chief Enforcement Attorney of the OPA in Chicago that it had been making sales for more than a year past at "over-ceiling prices" and that a suit for treble damages in the name of the Price Administrator would be instituted promptly against it in the U. S. District Court at Chicago.

On August 23, 1943, such a suit was filed against petitioner asking treble damages aggregating $150,000 (U. S. D. C. N. D. Ill., E. Div., Case No. 43 C775) (R., 4, 101). This suit is still pending.

Subsequently, on October 5, 1943, petitioner received a letter—as had been requested by it—from the Chief Enforcement Attorney at Chicago, setting forth "examples of most of the types of violations of the General Maximum Price Regulation which our investigation * * * disclosed existed on the part of" petitioner "in the sale of gloves" (R., 4, 39, 49). There were 112 such "examples."

This letter did not purport to set forth the grounds for claiming that petitioner's sales were at over-ceiling prices. But it was apparent that the Price Administrator then and for the first time had effected a change in the oral interpre-

tation of June 3, 1942, in which the propriety of the use of "in-line" pricing in determining petitioner's ceiling prices had been confirmed (R., 5).

As a part of the evidence in the protest filed with the Price Administrator, petitioner submitted schedules showing data with regard to all of the 112 alleged over-ceiling sales (R., 44 through 51). These schedules and other sworn evidence in the protest establish the fact that the March 17, 1942 published prices were fixed according to "in-line" pricing methods traditionally employed in the glove industry (R., 6, 42, 95-96).

Petitioner's Complaint in the Court Below.

In its complaint filed in the Emergency Court of Appeals the petitioner asked, first, that the provisions of Section 1499.2 of the General Maximum Price Regulation be set aside insofar as they exclude the use of "in-line" pricing methods by petitioner and others in the glove industry. Petitioner asked, secondly—and in the alternative,—that the provisions of that section of the Regulation be construed so as to permit the use of "in-line" pricing methods by petitioner and others in the glove industry. Thus, petitioner's relief would have been complete whether the Emergency Court of Appeals had to that extent set aside the provisions of the Regulation or had, in effect, modified its provisions by ordering the Price Administrator to place a construction upon them which would not do violence to Section 2(h) of the Act.

Price Administrator's Answer in the Court Below.

The Price Administrator not only has repeatedly admitted that "in-line" pricing is a "practice" of long standing in the glove industry, (R., 108) but he has also admitted

by his answer filed in the court below that petitioner determined its selling prices according to that practice (R., 109).

The Price Administrator also has made the binding admission that the use of the practice has been the only practicable way for petitioner and for others in the glove industry to fix the prices of the gloves manufactured and distributed by them (R., 94). He could hardly have admitted more flatly that the use of "in-line" pricing constitutes an *established means* and *aid to distribution* in the glove industry.

These admissions made by the Price Administrator in his answer filed in the court below are, under the law, binding admissions for the purposes of this case. The fact that the Price Administrator is an agent of an arm of the Government does not alter or detract from the binding effect of these admissions. *Henry Kaelin & Son* v. *United States* (D. C., E. D. N. Y.—1923), 290 Fed. 242. *In re Minot Auto Co.* (C. C. A., 8—1924), 298 Fed. 853. *First Nat. Bank* v. *United States* (D. C., Mo.—1932), 2 Fed. Supp. 107; affirmed, 65 F. (2d) 536; cert. den., 290 U. S. 652.

In the last-mentioned case, *First National Bank* v. *United States,* the Court said (2 Fed. Supp. at page 108):

> "When the United States of America comes into court, it comes, so far as regards practice and procedure, just as any other litigant; it is not to be hedged about by any attribute of a sacrosanct character. It will require a constitutionally valid statute to change the rule, and there is none in existence, either valid or invalid."

To the same effect are *United States* v. *Stinson* (1905), 197 U. S. 200, and *O'Brien* v. *United States* (C. C. A., 7—1931), 51 F. (2d) 674.

Original Opinion of the Emergency Court of Appeals.

At the time of the entry of its judgment—on May 1, 1945—dismissing petitioner's complaint, the court below filed its original opinion, which appears at pages 126 through 129 of the record. This opinion was later amended by the court. The character and substance of the amendment is discussed later on in this petition (pp. 16, 22), In its original opinion, the court found that (R., 129):

> "The question is narrow and leads to two inquiries; first, whether complainant has established by the evidence a customary *unvarying* practice which is traditional in the business history of complainant and others similarly situated, and, second, whether the method is a business practice within the meaning of Section 2(h) of the Act. If our decision is in the negative upon the first, it becomes unnecessary to decide the second" (*emphasis added*).

The court then found, apparently, that the first question should be answered in the negative. The court said (R., 129):

> "The record discloses that the so-called in-line pricing method and its characteristics were given careful consideration by the Administrator. He found from the evidence that the complainant's price differentials were not fixed or unvarying. Those in the December, 1941 price list varied from those in the March, 1942 list in many instances. As to many items, the differentials were increased; in others, they were decreased, and the evidence fails to establish a standard unvarying rule or to account for these discrepancies. The system as presented by complainant itself reflected many irregularities which are unexplained. We think the Administrator had before him substantial evidence to support his position that, while in-line pricing may represent a general tendency in the industry, it was not applied with precision by complainant, was not consistently or uniformly applied by it, and fell far

short of a fixed, steadfast, unvarying practice. We are unable to say as a matter of law that the Administrator was arbitrary and capricious in failing to frame the regulation so as to protect such an uncertain and irregular practice."

Petition for Rehearing.

Petitioner presented a number of grounds for its requested rehearing. Stated briefly, petitioner pointed out that (R., 133, 134):

> The court had narrowed the possible construction of the word "practice" for the purposes of this case. It had done so apparently without reference to any accepted construction of that term according to general usage; and it had done so expressly without reference to the meaning of that word as it is used in Section 2(h) of the Act.
>
> The court's construction of the term "practice" with relation to the practice here involved was tantamount to a finding that *all* business practices—according to the generally accepted meaning of that term—must be not only customary and traditional, but must be *unvarying*.
>
> There could be no reason for the court to narrow the general meaning of the word "practice" to a procedure that is unvarying where the respondent Price Administrator has admitted there *was* a practice, and the statute did not qualify the term "practice" by requiring that it be unvarying.

Petitioner also pointed out that (R., 135):

> Since, admittedly, the only practicable way to fix the selling prices of the gloves manufactured and distributed by the industry was through the use of "in-line" pricing, it constitutes an essential means and an aid to distribution within the meaning of Section 2(h) of the Act; but the court had not even considered the meaning of those terms.
>
> In view of the respondent's binding admissions in

that connection and the absence of any evidence to the contrary, under the provisions of Section 2(h) the Price Administrator was without power to change the practice of "in-line" pricing except to prevent circumvention or evasion of the provisions of the regulation or of the Act.

The Court's Amendment to Its Original Opinion.

Thereupon—on May 28, 1945—the court below entered an order denying the petition for rehearing, but amending its original opinion (R., 139). The court struck out the portion of the opinion quoted above (pp. 14-15) and substituted the following (R., 139, 140):

> "The question is narrow and leads to two inquiries. First, whether complainant has proved an established practice or means or aid to distribution in its business and, second, whether what has been done is a business practice or means or aid to distribution within the meaning of Section 2(h) of the Act. If our decision is in the negative upon the first, it becomes unnecessary to decide the second.
>
> "The record disclosed that the socalled in-line pricing system and its characteristics were given careful consideration by the Administrator. He found that 'many of the ramifications of in-line pricing * * * are not only irreconcilable with the regulation itself but their application would lead to circumvention and evasion, and render practical enforcement difficult.' Complainant's price differentials are not uniform. Those in the December 1941 price list varied from those in March 1942 list in many particulars. Many were increased. Others were decreased. According to the dictionaries, both lay and legal, a practice is a custom or usage, a customary usage, something habitually and uniformly performed. It implies uniformity and continuity. To establish is to make stable or firm; to fix in permanence and regularity, to settle or secure on a firm basis, to settle firmly or to fix unalterably. The system as presented

by complainant itself reflected many irregularities and in view of the unsatisfactory evidence, we think it cannot be said that the socalled in-line method was either an established practice or an established means or aid to distribution, uniformly followed or clearly settled. In other words, the proof does not disclose an established business practice or means or aid to distribution. We are unable to say as a matter of law that the Administrator was arbitrary and capricious in failing to frame the regulation so as to protect something which was not uniform, settled or established. Rather we think the Administrator had before him substantial evidence to support his position that, while in-line pricing may represent a general tendency in the industry, it was not applied with precision by complainant, was not consistently or uniformly applied by it, and fell far short of an established practice or means or aid to distribution."

QUESTIONS PRESENTED.

1. What is the correct construction of Section 2(h) of the Emergency Price Control Act, whereby the powers of the Price Administrator are limited with respect to compelling changes in "the business practices, cost practices or methods, or means or aids to distribution established in any industry", in its application to the practice of "in-line" pricing, as used in the glove industry and as used by petitioner in determining its March 1942 selling prices?

2. Was the decision of the Emergency Court of Appeals correct in determining that the practice of "in-line" pricing—which is admittedly a practice and the use of which has admittedly been essential to the glove industry—is neither a "practice", nor a "means" or an "aid to distribution", "established" in that industry within the meaning of the provisions of Section 2(h) of the Emergency Price Control Act?

(a) Was the Emergency Court of Appeals correct in holding that a "practice" must, in order to be a practice, be forever unvarying?

(i) Was this holding correct in view of the Price Administrator's repeated and legally binding admission that there *was* a "practice"?

(b) Was the Emergency Court of Appeals correct in holding that a practice can only be "established" in an industry if such practice is forever unvarying?

(i) Was this holding correct in view of the Price Administrator's legally binding admission that there was a practice and that it had been in general use in the industry for a period of more than 15 years?

(c) Was the Emergency Court of Appeals correct in holding that a practice, which is admittedly used as a means and an aid to distribution of an industry's products, must, in order to constitute an *established* means or aid to distribution in that industry, be a practice which is forever unvarying?

REASONS FOR GRANTING THE WRIT.

1. *The question presented involves a problem of importance in the administration of the emergency price control and the stabilization laws.*

Chester Bowles, Administrator v. *Seminole Rock & Sand Co.* (decided June 4, 1945), U. S. Supreme Court Case No. 914.

2. *The Emergency Court of Appeals has determined an important question of federal law which has not been, but should be, settled by this Court.*

Rule 38, par. 5(b) of Rules of the Supreme Court (U. S. C. A., Title 28, fol. sec. 354, Cum. An. Pckt. Part).

ARGUMENT.

1. *The court below has misconceived the nature of the practice and the manner of its operation.*

"In-line" pricing embraces within its structure a large number of differentials, each of which is represented by a cent-amount. As has been stated, in fixing the selling prices of gloves, these differentials are applied with respect to a large number of minor differences in construction features of the gloves being priced. They are applied and reflected in the selling prices of gloves within each single class of substantially identical styles of gloves.

The application of "in-line" pricing with respect to a single differential representing a single minor difference in construction as between two gloves within a particular class operates in this way: The price of one style of glove constructed with a certain feature carries a particular differential, expressed by a cent-amount, from the price of the style in the same class which is identical in construction except for that feature. The differential representing that feature is a fixed amount and is maintained between the prices of those two glove styles from one price list to the next. It is maintained without regard to and without relation to increases or decreases, from one price list to the next, in the selling prices quoted for those two styles of gloves. An increase of, for example, 10% in the selling prices of those styles, from one price list to the next, would not carry with it a corresponding increase in that differential. The difference in price between them would be the same on both lists.

This does not mean, however, that, once fixed, the cent-amount of that differential will never change. It does not mean that the cent-amount of that differential is the same

today as it may have been years ago when the feature which it represents was for the first time employed in the construction of that glove. During the period of more than 15 years within which "in-line" pricing has been used in the glove industry, the cent-amount of that differential might—although infrequently—have been slightly raised or slightly lowered. Nonetheless, the slight and infrequent rise or drop in such cent-amount has resulted from the application of "in-line" pricing methods and has been made in order to maintain a workable differential structure. It has not been done with reference to or in line with any increase or decrease in the selling prices of those two gloves. And that differential, the cent-amount of which has been fixed according to "in-line" pricing methods, has been maintained between the prices of the two glove styles since the particular feature was first employed in the construction of one of them. As has been established by petitioner's sworn statements (R., 6) and the Price Administrator's own admission through his answer filed in the court below, the use of the differentials embraced by the "in-line" pricing structure has been the only practicable way for the glove industry to price the gloves manufactured and sold by that industry.

In his opinion on denial of petitioner's protest, the Price Administrator admitted that "in-line" pricing is a *practice*. He gave only one reason in his opinion for finding that it was not a "*business* practice" within the protective scope of Section 2(h) of the Act. The reason he gave was that it is a "*pricing* practice", and that—on the authority of *Philadelphia Coke Co.* v. *Bowles* (Em. Apps.—1943), 139 F. (2d) 349—a "pricing practice does not fall within the prohibition of Section 2(h)" (R., 60).

The Emergency Court of Appeals, in its original opinion held that "in-line" pricing was not a practice. Its

holding was based solely on the ground that the practice was not *unvarying*.

Through the amendment to its opinion, the court both changed and added to the grounds for its original position. Under the amendment, the court stated as a ground for its conclusion the fact that "the dictionaries, both lay and legal," say that "a practice is a custom or usage, a customary usage, something habitually and uniformly performed." "It implies" said the Court, "uniformity and continuity."

Apparently the court was not satisfied with this—as can readily be understood. In the first place, the Price Administrator has consistently admitted that "in-line" pricing *is* a practice. In the second place, the court again impressed a construction upon the word "practice", which upon its face, is even narrower than was intended by the wording of the definitions selected by the court for its purposes. An equally accurate legal definition of "practice" is "an act often repeated by the same person," (*West* v. *Sun Cab Co.*, 154 A. 100, 103, 160 Md. 476), or "a succession of acts of a similar kind or in a like employment." 3 Bouv. Law Dict. Rawles Ed., 3rd Rev., p. 2650. And a practice of maintaining fixed amounts as differentials between glove styles, reflecting minor differences, in construction features, is still a practice even though the cent-amounts of those differentials may—at some time during the history of their use—be slightly raised or lowered.

The court then, and for the first time, turned to a consideration of the word "established". The court said in its amendment to the original opinion (R., 139): "To establish is to make stable or firm; to fix in permanence and regularity; to settle or secure on a firm basis, to settle firmly or to fix unalterably." But the court's state-

ment of the general meaning of the word "established" is perhaps even less enlightening than its discussion of the meaning of the word "practice". Moreover, the court's definition can hardly be distorted to the extent necessary to support its conclusion that the practice was not *established* in the glove industry. In addition, its conclusion is directly contrary to the Price Administrator's binding admission that "in-line" pricing has been in general use in the glove industry for a period of more than 15 years. In view of this admitted fact, the reason the Price Administrator himself has never denied it to be an "established" practice is obvious.

The court then refers to what it calls the "irregularities" presented and the "unsatisfactory evidence" concerning them. The "irregularities" to which the court refers consist of 28 selling prices of 28 gloves included in the March 27, 1942 published price list. The "unsatisfactory evidence" relates to petitioner's explanations concerning those 28 selling prices.

Contrary to the court's view, these irregularities indicate, at most, that some of the cent-amount differentials embraced by the "in-line" pricing structure and employed by petitioner in pricing its gloves shown on the March 17, 1942 price list were slightly raised or slightly lowered after the December 1941 price list was made up. They do not indicate that petitioner failed to follow, or that other manufacturers in the glove industry failed to follow—uniformly and consistently—"in-line" pricing methods or to apply the differentials fixed according to "in-line" pricing procedures in determining the selling prices of their gloves. The contrary has been established by the sworn statements of petitioner and the Price Administrator's own admissions.

Let us suppose that the practice of "in-line" pricing

involved the application of only one differential and the use of only one minor construction feature—instead of many differentials and many features. It would be patently unreasonable to say, in determining the existence or the uniform application of the practice, that once the cent-amount of that differential had been fixed, then—throughout the history of the practice—it could never be changed. It would be even more unreasonable to say, in determining the existence or the uniform application of a practice, that once the cent-amounts of a large number of differentials had been fixed, then—throughout the history of the practice—not one of those many differentials can ever be changed. In either case, the cent-amount of a differential may vary, but the consistent and uniform application of the *practice* does not.

Of the 28 so-called irregularities, 25 were taken from Schedules A through D, which were submitted as a part of the sworn evidence included in the protest (R., 44 through 51). These schedules embraced the 112 sales of 112 different styles which, according to the Price Administrator's claim, had been sold at over-ceiling prices. With respect to those 112 styles, the schedules show the selling prices in the December 1941 list, and the selling prices in the March 1942 list of each of the 112 styles.

The schedules show that the selling prices of 87 of the styles carried exactly the same penny-amount of difference, between their selling prices and those of the "in-line" base gloves within the same class, as were carried in the previous price list published in December, 1941. They show that the selling prices quoted for 25 of those styles in the March 1942 price list carried a slightly higher or lower difference, with respect to the selling prices of the "in-line" base gloves of the same model, than were carried in the previous price list published in December, 1941.

The notes to the schedules do contain explanations for 17 of the 25 changes in price differences carried forward from December, 1941 to the 1942 price list, which changes are reflected on the face of those schedules (R., 42, 43).

Without going into detail, these explanations indicate that changes in price differences between selling prices of gloves within the same class may occur between the issuance of one price list and the next for a number of reasons. They may occur (a) where the glove being priced involves extra material in its construction as compared to other gloves within the same class; (b) where the selling price of a particular glove is arbitrarily held down in order to permit its resale by retailers within a particular price range customarily employed by retailers; (c) where the kind of leather used in the construction of a particular glove style involves greater expense than the leather involved in the construction of the other substantially equivalent gloves in the same class; and (d) where a "tentative" selling price for a new style has—through inadvertence—been improperly fixed on the preceding price list with relation to the selling prices of other gloves in the same class. All of them are changes which must necessarily—though infrequently—be made in order to maintain a workable differential structure and a workable price structure for distribution of their gloves.

As petitioner pointed out to the court below, the most significant thing about the data concerning the 112 styles shown by the December, 1941 and March, 1942 price lists and on Schedules A through D is this:

Had markup methods common to the glove industry and other industries been followed by petitioner in making up its March 17, 1942 prices, *without* "in-line" pricing, then quite obviously the general increase of 10% in all of petitioner's selling prices would have resulted in a like

increase of 10% in the amounts of all differentials, reflecting the minor features employed in the construction of the various gloves in each class. And the application of each increased differential would have resulted in an upward change of 10% in the difference between the selling price of each glove carrying the feature as compared with the otherwise identical glove which did *not* carry that feature.

A differential of 25 cents in the December price list—reflecting a minor difference in construction—would have resulted in a corresponding 10% increase in that differential in the later March price list. Accordingly, such a 25 cent difference in the December price list between the selling price of the glove carrying that feature and the selling price of the same glove which did not carry that feature, would have increased to a 27½ cent difference in the March price list. And changes in the penny-amount of the differences between the selling price of gloves within the same class—instead of being reflected in the quoted price for only 28 glove styles—would have been reflected in the price quoted for each of the 167 glove styles.

Accordingly, these changes in price differences between gloves in the same class are not attributable to the application of markup methods commonly employed in other industries and employed by the glove industry in determining the overall selling price for each style of glove. The existence of such changes in price differences does not disprove or detract from the sworn evidence of petitioner and the binding admissions of the Price Administrator that the practice did exist and that the practice was uniformly applied by petitioner and by others in the glove industry.

2. *The use of "in-line" pricing does not open the door to "circumvention" or "evasion" of the Regulation or the Act.*

It is submitted that the sworn statements and other evidence submitted with the protest, taken with the binding admissions of the Price Administrator, have conclusively proved that "in-line" pricing is a business practice established in the glove industry. They have conclusively demonstrated that it is an established business practice and an established means and aid to distribution in the glove industry. Accordingly, the Price Administrator did not have the power to compel a change in the practice of "in-line" pricing unless it was necessary to do so in order to prevent circumvention or evasion of the provisions of the General Maximum Price Regulation or of the Act.

It is perfectly apparent that petitioner has had no intention or design to "circumvent" or "evade" the provisions of the General Maximum Price Regulation or of the Act, for its March 17, 1942 prices were prepared and published more than a month before that Regulation was even issued. The glove prices quoted on the March 17, 1942 price list had already been fixed on the customary "in-line" basis. They were in the hands of petitioner's customers and at least some glove styles in each separate class of substantially equivalent gloves had been sold at those prices and deliveries of them had been completed before the end of March, 1942. All of this had been completed almost a month before the General Maximum Price Regulation was issued.

Petitioner has never sought and is not now seeking to increase its prices over those published during the month of March, 1942. Hence, the Regulation's intended control over any increase in prices above that key month will not

be circumvened, evaded or otherwise affected by the relief sought by petitioner in this case. In the Price Administrator's own Statement of Considerations, filed on issuance of the Regulation, he tells us that:

> "The core of the General Maximum Price Regulation is its requirement that each seller charge no more than the prices which he charged during the base period,—March 1-31, 1942" (OPA Serv., Vol. 2, "General," Page 20,207).

The only other possible problem, involved in the question of "circumvention" or "evasion", relates to the enforcement of the Regulation. The court said that the Price Administrator had found that (R., 139):

> "'Many of the ramifications of "in-line" pricing * * * are not only irreconcilable with the regulation itself but their application would lead to circumvention and evasion, and render practical enforcement difficult.'"

It is submitted that this "finding" is not binding, and that it is valueless because the evidence clearly establishes the contrary.

Of course, difficulties of enforcement are not mentioned in the statute as a basis for possible circumvention or evasion; nor is there any other sound legal reason for excluding a practice simply because the Price Administrator is disposed to avoid enforcement difficulties. Such a practice is protected, under the provisions of Section 2(h), whether or not the existence or use of it may make it more difficult for the Price Administrator to enforce his Regulation.

But in any event, as we pointed out to the Price Administrator and to the court below, the evidence of this case clearly establishes the contrary to be true. The Price Administrator's investigation of the books and records of petitioner's sales, made before he started his $150,000 suit, revealed possible over-ceiling claims with respect

to 112 sales of 112 glove styles. The Price Administrator has before him, in the schedules submitted with the protest, a complete tabulation of all data concerning all of the 112 sales which he claims were made at over-ceiling prices. Petitioner has detailed price differences between the selling price of each of those styles and the substantially equivalent style used as a base for "in-line" pricing purposes, in determining the correctness—according to "in-line" methods—of the March 17, 1942 published selling prices. Already, the Price Administrator is admittedly satisfied as to the correctness of the selling prices, determined under "in-line" methods, for the styles involved in 87 of those sales. Thus the standard for determining the ceiling prices for those 87 styles is as definite and certain as the standard which he seeks to employ. Nor is it any more easily evaded.

At most, he now needs only to determine whether petitioner failed to follow the practice because it did not maintain the same price differences in the March list as it did in the December list between the selling prices of 25 styles and the selling prices of other styles in the same class as those styles. He cannot refuse to hear petitioner's explanation, in an enforcement court, of the propriety of its determination of those 25 prices under "in-line" methods by the simple expedient of disclaiming here that the practice ever existed or that it was ever established.

If in raising or lowering the amounts of any of those differentials, the petitioner has failed to follow "in-line" pricing methods, this, again, does not disprove the existence of the practice. Whether or not petitioner, in any of those instances, failed correctly to apply "in-line" pricing methods is a matter for determination by an enforcement court.

Conclusion.

The conclusion is inescapable that, so far as the existence and use of the practice is concerned, the lower court should have considered itself bound by the sworn statements of the petitioner and the admissions of the Price Administrator. Accordingly, "in-line" pricing did exist as a practice—not as a general tendency—and it was an established practice and an established means and aid to distribution which had been used continuously in the glove industry for more than 15 years. It was employed by petitioner and by others in the glove industry as a means of fixing the prices for their gloves. It was also employed as a means and an aid to the distribution of their gloves. It was not necessary for the Price Administrator to attempt to compel a change in that practice or to compel the petitioner or others, similarly situated, to roll back their prices for a period of almost four months, or for any other period, in order to prevent circumvention or evasion of the provisions of his Regulation or of the Act. It was unnecessary for him to do so, either for the purpose of holding glove prices at the March 1942 level or for the purpose of enabling him effectively to enforce the provisions of his Regulation.

PRAYER.

For the reasons stated in this petition, a writ of certiorari should issue to review the judgment of the United States Emergency Court of Appeals to the end that the judgment of that court be reversed by this Honorable Court, and that your petitioner shall have such other and further relief in the premises as to this Honorable Court may seem lawful and just.

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APPENDIX A.

Section 1499.2 of the General Maximum Price Regulations.

§ 2. Maximum Prices for Commodities and Services: General Provisions. Except as otherwise provided in this Regulation, the seller's maximum price for any commodity or service shall be:

(a) The highest price charged by the seller during March 1942:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it; or

(b) If the seller's maximum price cannot be determined under paragraph (a), the highest price charged during March 1942 by the most closely competitive seller of the same class:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

Highest Price Charges During March, 1942.

For the purposes of this General Maximum Price Regulation, the highest price charged by a seller during March 1942 shall be:

(a) The highest price which the seller charged for a commodity delivered or service supplied by him during March 1942 to a purchaser of the same class; or

(b) If the seller made no such delivery or supplied no such service during March 1942, his highest offering price for delivery or supply during that month to a purchaser of the same class; or

(c) If the seller made no such delivery or supplied no such service and had no such offering price to a purchaser of the same class, the highest price charged by the seller during March 1942 to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers.

Provided, however, that

(1) If before April 1, 1942, the seller raised his prices for a commodity or service to all his classes of purchasers (or to all classes of purchasers except those to whom he was bound to make delivery or supply during March 1942 pursuant to a firm commitment made before the price rise) and

(2) If during March 1942 he delivered the commodity or supplied the service at the increased price to at least one class of purchasers, then in order to allow the seller to apply the price rise to any class of purchasers to which no delivery or supply was made during that month after the price rise (except under a firm commitment made before the price rise), the highest price charged during March 1942 shall be deemed to be:

(i) The seller's increased offering price to such class of purchasers for delivery or supply during March 1942, or

(ii) If the seller had no such increased offering price to that particular class of purchasers, the highest price charged during March 1942 to a purchaser of a different class, adjusted to reflect—

(a) The seller's customary differential in price between the two classes of purchasers, or

(b) If the seller had no such customary differential, the actual percentage differential in price between the two classes of purchasers which existed at the time the seller last entered into a commitment, or if he did not enter into such a commitment, last submitted an offering price, for delivery or supply to a purchaser of that particular class during March 1942.

No seller shall evade any of the provisions of this General Maximum Price Regulation by changing his customary allowances, discounts or other price differentials.

No seller shall require any purchaser, and no purchaser shall be permitted, to pay a larger proportion of transportation costs incurred in the delivery or supply of any commodity or service, than the seller required purchasers of the same class to pay during March 1942 on deliveries or supplies of the same or similar types of commodities or services.

"Similar Commodities or Services."

One commodity shall be deemed "similar" to another commodity, if the first has the same use as the second, affords the purchaser fairly equivalent serviceability, and belongs to a type which would ordinarily be sold in the same price line. In determining the similarity of such commodities, differences merely in style or design which do not substantially affect use, or serviceability, or the price line in which such commodities would ordinarily have been sold, shall not be taken into account. One service shall be deemed "similar" to another service if the first has the same use and purpose as the second and belongs to a type which would ordinarily be sold for the same or substantially the same price.

Special Provisions.

The maximum prices established by this section for certain commodities or services or in certain transactions may be modified by supplementary regulation issued under this section.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	8
Conclusion	15
Appendix	16

CITATIONS

Cases:	
Dobson v. *Comm'r*, 320 U. S. 489	11
Philadelphia Coke Co. v. *Bowles*, 139 F. (2) 349	6, 12
N. L. R. B. v. *Hearst Publications*, 322 U. S. 111	11
Seaboard Oil Company of Delaware v. *Bowles*, E. C. A., decided June 7, 1945	12
Seminole Rock and Sand Co. v. *Bowles* (No. 914, Oct. Term, 1944, decided June 4, 1945)	15
United States Gypsum Co. v. *Brown*, 137 F. (2) 803	13
Statute and Regulation:	
Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess.:	
Section 2 (h)	9, 16
General Maximum Price Regulation, Section 2	3

659236—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 181

WELLS LAMONT CORPORATION, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR, AND JAMES G. ROGERS, ACTING ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals, originally issued on May 1, 1945, and amended on May 28, 1945 (R. 126–129, R. 139–140), is reported in 149 F. 2d 364.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on May 1, 1945 (R. 130) and the order denying the petition for rehearing on May 28, 1945 (R. 139–140). The

petition for a writ of certiorari was filed June 26, 1945. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App., Supp. III, Sec. 901, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess. (herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. Sec. 347).

QUESTION PRESENTED

Whether the Emergency Court of Appeals was right in holding that the "in-line" pricing system exhibited in petitioner's price list issued on March 17, 1942, was not "an established practice or means or aid to distribution" within the meaning of Section 2 (h) of the Emergency Price Control Act, as amended.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942 are those of Section 2 (h) which are set forth in the Appendix to this brief. The relevant provisions of Section 2 of the General Maximum Price Regulation are found at R. 68–69.

STATEMENT

The General Maximum Price Regulation was issued on April 28, 1942, and went into effect on May 11, 1942, with respect to sales at wholesale. On July 10, 1944, petitioner filed its protest

against the Regulation (particularly Section 2 thereof) as interpreted and applied by the Price Administrator to its sales of gloves.[1] Section 2 of the General Maximum Price Regulation provides that a seller's maximum price for any commodity shall be "the highest price charged by the seller during March 1942" for the same commodity. "Highest price charged by a seller during March 1942" is specifically defined as "the highest price which the seller charged for a commodity delivered * * * by him during March 1942 to a purchaser of the same class. * * *." Section 2 also provides that if a seller made no such delivery during March 1942, his highest offering price during that month for a delivery to a purchaser of the same class shall be his maximum price.

During 1941, petitioner manufactured and offered for sale approximately 340 styles of work

[1] On two prior occasions, October 24 and December 31, 1943, petitioner filed protests embodying substantially the same objections. These protests were dismissed by the Price Administrator as untimely on November 24, 1943 and February 7, 1944. Subsequent to dismissal of these protests, petitioner filed two complaints in the Emergency Court of Appeals and the proceedings were there consolidated as Case Nos. 112 and 129. On July 7, 1944, by agreement of the parties, the consolidated proceeding was dismissed by the Emergency Court of Appeals without prejudice to petitioner's filing a new protest "with respect to the same regulation provisions and involving the same or substantially the same subject matter and grounds for objection". (R. 54, n. 1.)

and seasonal, semi-dress gloves listed in its Catalog No. 33 (Exhibit B; R. 38). On December 1, 1941, petitioner issued a price list for practically all of the styles described in the catalog. On January 22, 1942, it issued a letter-notice to its customers withdrawing the December 1941 price list and announcing that its entire production of work gloves for the first quarter of 1942 had been sold (Exhibit G; R. 52). During March 1942, petitioner made deliveries of at least 112 styles at prices found in the December 1, 1941 price list (Exhibit E; R. 39–40; Schedules A, B, C and D to Exhibit F; R. 44–51). Of these 112 styles delivered in March at December 1941 list prices, 10 involved commitments or sales made during March (R. 42); and the remaining 102 styles represented orders taken prior to March.

On March 17, 1942, petitioner issued a new price list for approximately 304 styles of gloves described in its catalog, incorporating a higher schedule of prices than those quoted for the same styles in the December 1, 1941, price list (Exhibit C; R. 30–37). The petition (at pages 9–10) states that the prices in the March 17, 1942, price list were approximately 10% higher than those in the December 1941 list.

While at least 112 styles were delivered in March 1942 at December 1941 prices, 13 other styles were delivered in March at the higher March 17, 1942, list prices (Schedules A, B, C and

D to Exhibit F; R. 44–51).[2] During the March 1942 base period, petitioner delivered, pursuant to commitments made during that month, 10 styles at December 1, 1941, prices and 13 styles at the higher March 17, 1942, prices (Exhibit F; R. 42; Schedules A, B, C and D to Exhibit F; R. 44–51). In sum, during March, a total of at least 125 styles were delivered—112 at December 1941 prices and 13 at March 17, 1942, prices.

Petitioner, in its protest, objected to both the interpretation and the validity of the General Maximum Price Regulation insofar as the Regulation was applied to establish its maximum prices by reference to deliveries during March 1942 at prices set forth in the December 1, 1941, price list. Petitioner sought to justify charging higher prices for 112 styles of gloves delivered during March 1942, at December 1, 1941, prices, and, in fact, for all styles of gloves generally after March 17, 1942, on the ground that it issued a new higher price list on March 17, 1942, delivered 13 styles during that month at the higher list prices, and therefore had a right to resort to the March 17 price quotations for all 300 styles. The process by which this is accomplished is described as "in-line pricing" (R. 3–5, 7; 92–96). This system of "in-line pricing," petitioner asserted, is a "business practice and means or aid to distribu-

[2] Style numbers 12, 8, 256L, 626, 699, 326, 3102, 3130, 103, 115, 884, 874, and 959. Although the record does not disclose the fact, complainant asserted in its reply brief in the court below that 42 additional styles were delivered in March at the March 17 prices, making 55 in all.

tion" established in the industry and as such protected by Section 2 (h) of the Act from interference by the Price Administrator.[3]

On September 2, 1944, the Price Administrator denied petitioner's protest (R. 53). The opinion (R. 54–63) held that "the so-called 'in-line pricing' techniques * * * do not come within the protective scope of Section 2 (h). 'In-line pricing' is a pricing practice—not a business practice," citing *Philadelphia Coke Co.* v. *Bowles,* 139 F. (2d) 349 (E. C. A.). (R. 60.) After stating that "although 'in-line pricing' is not a business practice within the meaning of Section 2 (h)," the Administrator's opinion went on to make the following finding: "the Administrator deems it proper to observe that many of

[3] Petitioner alleges that the "in-line pricing" system is based on the establishment and maintenance of "standardized differentials" in price between different styles of gloves falling within the same general classification founded on material and type of construction (Pet. 6–9). Petitioner refers to "subject gloves" and "base gloves." Base gloves are evidently those standard types by reference to which other styles are priced according to "customary" differentials. Petitioner points out that a general increase in prices may be put into effect without changing the cent-amount of the various differentials (Pet. 25–26). By raising the prices of the "base gloves," petitioner contends that increased in-line prices with respect to other styles automatically result from "the application of traditional or customary price differentials * * *" (R. 3). Petitioner's position is that the March 17, 1942, price list incorporates a higher schedule of prices for all of its styles generally in correct balance and relationship to each other—carrying over the "customary differentials" of the December 1941 price list.

the ramifications of 'in-line pricing' generally described in the protest are not only irreconcilable with the Regulation itself, but their application would lead to circumvention and evasion, and render practicable enforcement difficult." (R. 60–61.)

On September 28, 1944, petitioner filed its complaint with the Emergency Court of Appeals (R. 89–104). The Price Administrator's answer admitted "* * * that there are certain pricing practices in general use in the glove industry, commonly referred to as 'in-line pricing'", and then stated "affirmatively that such pricing practices are not uniformly or consistently applied but exhibit varying deviations in practice." (R. 108.) The answer also affirmatively stated that "in most instances, the March 17, 1942, price list * * * incorporates the same differentials as those included in its December 1941 price list, but in a substantial number of cases the differentials in the March 17, 1942 price list are different from those found in the December 1, 1941, price list." It also denied "that the pricing methods referred to * * * were proper under the General Maximum Price Regulation" but admitted that "Complaintant purported to determine its ceiling prices according to such methods." (R. 108–109.)

At the oral argument before the Emergency Court of Appeals the petitioner abandoned, for the purposes of the proceeding, its attack upon the

correctness of the Administrator's interpretation of the General Maximum Price Regulation. The court below therefore confined its attention to the objection that the Regulation as interpreted was in contravention of Section 2 (h) of the Act, and dismissed the complaint on the ground that (R. 140):

> * * * the proof does not disclose an established business practice or means or aid to distribution. We are unable to say as a matter of law that the Administrator was arbitrary and capricious in failing to frame the regulation so as to protect something which was not uniform, settled or established. Rather we think the Administrator had before him substantial evidence to support his position that, while in-line pricing may represent a general tendency in the industry, it was not applied with precision by complainant, was not consistently or uniformly applied by it, and fell far short of an established practice or means or aid to distribution.

ARGUMENT

1. Petitioner's basic contention is that the "in-line pricing" system exhibited by its March 17, 1942, price list is an established practice and means or aid to distribution within the meaning of Section 2 (h) of the Act and as such is protected against interference by the Price Administrator. In support of this contention petitioner has attacked as contrary to the evidence both the finding

of the court below that the "in-line pricing" system was not applied with sufficient uniformity and consistency to be regarded as an "established practice" within the meaning of Section 2 (h) (Pet. 23) and the finding of the Administrator, relevant to denial of exemption under Section 2 (h), that the ramifications of in-line pricing would lead to circumvention and evasion and render practical enforcement difficult (Pet. 28). Thus, the petition presents no questions of general significance but merely an attack upon certain factual determinations made by the Administrator and the Emergency Court of Appeals.

There was clearly ample evidence in the record to support the conclusion of the court below with respect to the lack of uniformity and consistency in the operation of in-line pricing as exemplified by petitioner. There was, for example, evidence that in approximately 25 instances referred to in the record, the differentials between the so-called "base gloves" and others in the same class were not the same in the March 1942 price list as they were in the December 1941 list. So, too, the schedules attached to petitioner's protest show substantial variations in the type of gloves used as the base glove. The petitioner cites as illustrative of the way in which in-line pricing operates the fact that the eight-ounce cotton flannel glove was customarily used as a base for pricing gloves of the same material in other weights. But the schedules show that the twelve-ounce flannel

gauntlet (Style No. 5) is claimed to be in line by comparison with the twelve-ounce flannel knit wrist (Style No. 12) referred to as the base glove delivered in March 1942; a ten-ounce type reenforced (Style No. 263) by comparison with a seven-ounce flannel elastic web (Style No. 256L), and a nine-ounce flannel gauntlet (Style No. 93) type by comparison with a twelve-ounce flannel knit wrist (Style No. 12) (R. 44–45, 48). In short, the eight-ounce cotton glove was not used consistently as a base in establishing the price of other gloves of the same material.

Petitioner's attempted explanations of these variations only emphasize the looseness of the alleged practice. Petitioner conceded that "in-line pricing" itself includes the right to make "adjustments" in differentials (see Pet. 25). According to petitioner, it did not mean that once fixed, a particular differential would never change. Occasions for such change might include material cost increases, construction requiring additional material, and realignment of price where it had assertedly been held down to permit resale within retailers' customary price ranges, etc. (Pet. 25). In other words, the so-called standardized differentials were fixed only "in the main" (Pet. 6, 9) and are indeed varying factors, depending on costs, merchandising considerations, and the like. The essential looseness of such a system is further illuminated by the fact that it is based on the

privilege of each manufacturer to determine for himself, not according to consistent, objective standards recognizable by others, the identity of base gloves. For example, petitioner described as so-called "base gloves" 13 styles delivered in March at March 17, 1942, list prices. There is no way of knowing whether a particular style is a base glove until the manufacturer determines and announces that fact. There is no objective standard by which to measure the raising of prices on "base gloves" or the "adjustment" of differentials applicable to others. The subjective character of "base gloves" merely provides sellers another form of controlling differentials and selling prices.

The characteristically factual type of controversy presented is borne out by the foregoing analysis as well as the discussion offered at pages 23 to 26 of the petition. This Court has held that "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited" (*N. L. R. B.* v. *Hearst Publications,* 322 U. S. 111, 131). "* * * When the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand." *Dobson* v. *Comm'r,* 320 U. S. 489, 502. These principles are also peculiarly applicable to review of a court of specialized jurisdiction such as the Emergency Court of Appeals.

2. Petitioner contends that the Price Administrator made "binding admissions" that "in-line pricing" was "essential" and the "only practicable way" of pricing gloves, and, in effect, that it was an established means or aid to distribution. It is clear, however, from the answer filed to the complaint that no such admissions were made. The Price Administrator there stated that while "there are certain pricing practices in general use in the glove industry, commonly referred to as 'in-line pricing,'" "such pricing practices are not uniformly or consistently applied but exhibit varying deviations in practice." (R. 108–109.) The Administrator in his opinion denying the protest also reached substantially the same conclusion as the Emergency Court of Appeals when he held that "many of the ramifications of in-line pricing * * * would lead to circumvention and evasion, and render practicable enforcement difficult." (R. 60–61.) In addition, the Administrator characterized "in-line pricing" as a "pricing practice" rather than a "business practice" and, as such, not within the protective scope of Section 2 (h). (R. 60.) In support of this position, the Price Administrator relied upon the decision of the Emergency Court of Appeals in *Philadelphia Coke Company* v. *Bowles,* 139 F. (2) 349 (E. C. A.), recently reaffirmed in *Seaboard Oil Company of Delaware, et al.* v. *Bowles,* E. C. A., decided June 7, 1945.

3. Petitioner maintains that the decision of the Emergency Court of Appeals was unreasonable on its face in holding that a practice, to be within the protection of Section 2 (h), must be "forever unvarying" (Pet. 18). The court's final opinion, however, makes no reference to "unvarying" (R. 139–140). The court did say that the word practice implies "uniformity and continuity"; that "to establish is to make stable or firm; to fix in permanence and regularity, to settle or secure on a firm basis, to settle firmly or fix unalterably." (R. 139.) In the context here presented there can be no doubt of the necessity for uniformity and consistency to bring the alleged practice within the protection of Section 2 (h). Petitioner has asserted that the General Maximum Price Regulation is invalid insofar as it prohibits him from following pricing techniques that he has customarily followed, and that he is entitled as a matter of law to maximum prices established in accordance with those techniques. Yet those pricing techniques are so varied as to leave a wide area of discretion to petitioner in the selection of the prices which he asserts are outside of control of the Price Administrator. Bearing in mind the intent of Section 2 (h) to prevent the Price Administrator from going beyond his legitimate price control functions in order to revamp industry practices, it is hardly disputable that the pricing techniques involved here are not within the protection of that section. Cf. *United States*

Gypsum Co. v. *Brown,* 137 F. (2) 803, 808–809 (E. C. A.).

4. But even if there were doubt as to the correctness of the conclusion of the court below that "in-line pricing" has not been shown to be a practice established in the industry within the meaning of Section 2 (h), interference with that practice would still be justified under Section 2 (h) on the ground that it was necessary, as the Administrator found, in order to prevent circumvention and evasion. The variations already referred to indicate the incompatability of the alleged practice with effective price control. Petitioner claims by virtue of "in-line pricing" the right to "adjust" differentials and to designate "base gloves"; every other seller of work gloves would be equally entitled to make the same determination in accordance with his own judgment. Clearly, recognition of such pricing methods as beyond the scope of the Price Administrator's control would be inconsistent with the qualification which Congress explicitly embodied in Section 2 (h).

5. There are certain subsidiary questions suggested by the petition which should be clarified. Petitioner asserts that the Price Administrator changed his interpretation of Section 2 of the General Maximum Price Regulation when he informed the petitioner that prices charged for deliveries in March 1942 would be the maximum

prices for the style so delivered, irrespective of whether deliveries were priced in accordance with the December 1941 price list or the March 1942 list (Pet. 11). But the official interpretation of Section 2 of the Regulation, consistently and uniformly applied by the Administrator, has been that the highest price charged for a commodity delivered in March 1942 is determinative of the seller's maximum price for the same commodity. The reasonableness of the Price Administrator's interpretation with respect to a similar regulation has recently been recognized by this Court. *Seminole Rock and Sand Co.* v. *Bowles,* No. 914, October Term, 1944, decided June 4, 1945. Petitioner also asserts that it would have been subjected "to severe hardship" if it had to maintain its December 1941 prices (Pet. 10). While this general assertion was made in the protest (R. 3), it has never been supported by corroborative evidence.

CONCLUSION

The decision of the Emergency Court of Appeals is sound and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

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Acting Solicitor General.

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

JULY 1945.

APPENDIX

The provisions of Section 2 (h) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess., are as follows:

> SEC. 2. (h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, *or changes in established rental practices,* except *where such action is affirmatively found by the Administrator to be necessary* to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.[1]

[1] The italicized words were added by Section 102 of the Stabilization Extension Act of 1944.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

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No. 181

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Petitioner,

vs.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

This Reply Brief will deal with but one question. That is the question of the uniformity, consistency and precision of operation of "in-line" pricing methods, as they have been employed by petitioner and other manufacturers in the glove industry for more than fifteen years. Upon its determination of that question alone rests the lower court's finding that the practice of "in-line" pricing is not a "practice" and that it was not "established" either as a practice or as a "means" or an "aid to distribution" in the glove industry, within the meaning of the provisions of Section 2(h) of the Act.

There is nothing in the statute indicating that a "practice" must be uniformly applied excepting, perhaps, as such lack of uniformity may lead to circumven-

tion or evasion. But in any event, if there is uniformity, then the lower court's decision—that "in-line" pricing was outside the purview of Section 2(h)—was incorrect. And if the selling prices for gloves within each class are, in fact, established with precision under "in-line" pricing methods, and the correctness of the amounts of those selling prices can be determined with precision by the Price Administrator for enforcement purposes, the decision of the lower court is wrong and should be reviewed.

The fact that the lower court erred in finding a lack of uniformity, of consistency and of precision in the operation of the practice can readily be demonstrated.

As support for its finding, the court relied in its final opinion upon the fact that price differences* between the selling prices of glove styles in the same class appearing "• • • in the December, 1941 price list varied from those in the March, 1942 list in many particulars." "Many were increased. Others were decreased." (R., 139.) Stated in another way, the court was referring to the fact that the amount of a price difference reflected in the December 1941 list between the selling prices of two glove styles in the same class may not, in every case, be the same as the amount of the price difference reflected in the March 1942 list between the selling prices of the same two styles.

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*We use the term "price differences" instead of the term "price differentials" used by the Court. This is to avoid confusion with the differentials which are applicable to particular material and construction features of styles within each class of gloves. In making up a given price list, the application of the cent-amounts of the latter—that is, of the differentials representing features of construction—creates the former—that is, the price differences in selling prices quoted on the given price list.

As pointed out in the Petition for Certiorari, the lower court has misconceived the nature of the practice and the manner of its operation. Under the practice, the selling prices of all gloves on a single price list are fixed by the uniform application, in making up those prices, of the cent-amounts of differentials representing the various features with which the glove styles are constructed. The uniformity of application consists in the maintenance, throughout that one list, of a single differential for each of the features. Although the same cent-amount for each of those differentials is, in the main, carried forward in making up the selling prices for later price lists, yet, contrary to the Court's conception, the practice does not require it. Thus, the cent-amount of a differential is applied *horizontally* across the selling prices appearing on a single price list. The practice does not require the application of the same cent-amount of the differential *vertically* from one price list to the next.

The fact that the amount of a price difference between the selling prices of two styles in the same class appearing on one price list may be changed on a later list does not establish any lack of uniformity or precision in the application or operation of in-line pricing in making up the selling prices on *either* of those lists. Such changes, occurring between the issuance of one price list and another, are entirely consistent with "in-line" pricing methods.

We should like to clear up any possible doubt on this matter.

1. "In-line" standards operate horizontally across the selling prices on a single price list.

The "Chart" appearing at the conclusion of this Reply Brief lists all of the styles of gloves in the same class with Styles Nos. 3132 and 3130* which are described in the Catalog and priced in the December 1, 1941 published price

*Styles Nos. 3132 and 3130 were used in the Protest to show the operation of "in-line" pricing in some detail (R., 6-7).

list in evidence in this case (R., 38—Catalog pp. 16-21; R., 23-25).

At the top of the left hand column of the Chart, the characteristics common to all styles in the class are stated. These common characteristics are "Leather Palm and Flannel Back, with leather tipped fingers." The $3.50 amount stated immediately opposite this description in the adjoining column is the charge per dozen pair, reflected in the selling prices on the December, 1941 list, for the leather palm—made of the lowest-priced leather material (2nd grade shoulder split)—and the flannel back (with tipped fingers).

Under the heading "Differentials" in the left hand column is a brief description of each of the different material and construction features carried by the different styles in the class—that is, the kinds of leather material, the types of cuff and the additional features with which the various styles are constructed. Immediately opposite each of the features is the cent-amount, per dozen pair, of the differential which was applicable to that feature in making up the December 1941 list.*

* Descriptions of material and construction features are shown in the Catalog (R., 38—Catalog, pp. 16-20). The cent-amount of each differential can be computed from the difference in the December 1, 1941 selling prices of two styles with and without the feature, coupled in most instances with the application of other differentials determined previously on the below list. The style numbers used, the features involved and the resulting cent-amounts are:

Style Nos.	*Feature*	*Cent Amounts*
3130 and 3132 (Also, R., 7)	Knuckle Strap (split)	.25
3130 and 3132 (Also, R., 7)	Continuous Heel	.25
29 and 235	Full Leather First Finger	.25
3102 and 33	1st Grade Shoulder Split	.40
24 and 3296	Safety Cuff (wide), elastic back	1.10

(Continued at bottom of next page.)

At the top of each of the other columns on the Chart is the "Style Number" of a glove. The features employed in the construction of each style number are reflected in the column under that style number by the insertion of the cent-amount of the differentials applicable to the features which it carried. At the bottom of these columns, immediately under the heavy line, are the "Totals (per dozen pair)". Each total is reached by adding to the $3.50 amount, charged for the characteristics common to all styles in the class, the cent-amount of each differential applicable to the features carried by the style numbered at the top of the column. The total of the amount shown in the column of each style number is the precise amount of the selling price published for that style number in the December 1, 1941 price list, as shown on the line immediately below the "Totals".

The Chart demonstrates the uniformity and consistency with which "in-line" pricing is applied in making up the selling prices, for a given price list, of styles within a single class of gloves. It demonstrates that the cent-amount of a differential, representing a particular feature, is uniformly applied and maintained *horizontally* in making up

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(Footnote continued from page 4.)

Style Nos.	*Feature*	*Cent Amounts*
29 and 24	Two-piece Waterproof Cufflex, elastic back	1.35
419 and 29	Waterproof Cufflex, elastic back	1.10
420 and 419	Safety Cuff (narrow), elastic back	.85
38 and 3102	Side Split	1.15
420 and 3130	Full Leather Thumb (split)	.25
239 and 39	Thumb Strap	.25
840P and 946P	Grain Leather Knuckle Strap	.50
327 and 420	¾ Leather Back	.75
790 and 24	E-Z Back Pattern	1.00
3398 and 3296	Fleece Lining and Roll Binding	1.35
840P and 24	Grain Leather (Buck tan) with Full Thumb	2.15
389P and 3130	Cream Grain Leather, Hob Nob	1.90
420 and 39	Lumber-Jack Pattern, knit-wrist	1.35
3102 and 3130	Knit-Wrist	.35
3296 and 420	Slip-on (no cuff), elastic back	.10

the selling prices, for a single price list, of all styles in the class which carry that feature.

Thus, the 25¢ differential applicable to the "knuckle-strap" feature carried by Style No. 3130 (6th column on Chart) was uniformly and consistently maintained in making up the selling prices on the December list for *each and every one* of the sixteen styles which carried that feature. Likewise, the 25¢ differential applicable to the "continuous-heel" feature carried by Style No. 3130 was uniformly and consistently maintained in making up the selling prices on the December list for all of the twenty-four styles which carried that feature.

The Chart demonstrates, too, that the *differences* between the selling prices of styles within the same class depend directly upon the features employed in their construction, and that those *price differences* are determined with absolute precision. Any given style may differ from another style in a single construction feature or in a combination of several features. But in making up a price list, the difference between the selling prices of the two styles is uniformly and precisely fixed through the application of the cent-amount of the single differential, or the cent-amounts of the several differentials representing those features.

The Chart shows, too, that, given the over-all selling price of a single style in the class and the cent-amounts applicable to the features carried by the styles in that class, the selling prices of all other styles in the class can be precisely and accurately determined. It answers respondent's claim, made in his brief (Page 11) that: "There is no way of knowing whether a particular style is a base glove until the manufacturer determines and announces that fact. * * * The subjective character of 'base gloves' merely provides sellers with another form of controlling differentials and selling prices." His statement is incorrect. For, as shown by the Chart, whatever style in the class is used as a "base"—whether Style 3130, 3132 or some other style—the application of "in-line"

pricing has led to the dollar and cent amount shown in the total at the bottom of the column under each style number; and that figure is the same as the December 1941 published selling price for the style.

It should, perhaps, again be noted here that the selling prices of the gloves had been made up and published in the December 1941 price list some five months before the General Maximum Price Regulation was even issued. The selling prices had been made up for the March 17, 1942, list more than two months before that Regulation was issued. Neither those selling prices nor the cent amounts of the applicable differentials could thereafter be changed. Petitioner could not thereafter and can not now, by "determining and announcing" that a particular style is a "base glove", exercise any control whatsoever over the amounts of the selling prices published for those gloves or the cent-amounts of the differentials representing the features employed in their construction; nor could he alter by a single cent the amounts of the price differences between the selling prices of those gloves which have resulted through the application of "in-line" pricing methods.

As has been stated, the Chart pictures the results of the application of "in-line" pricing in making up the selling prices of styles within a single class of gloves for a single price list. Petitioner's sworn statements establish the fact that "in-line" pricing was applied in making up the selling prices of styles within each separate class of gloves. The evidence and the binding admissions of respondent also establish the fact that it was applied by petitioner in making up its selling prices for a period of more than fifteen years to and including the March 17, 1942, published price list. (R., 5-8, 42; Complaint, R., 94). Accordingly, the Chart pictures the standards which have been applied by petitioner in making up the selling prices of styles within other classes of gloves on the December 1941 price list, as well as in making up the selling prices of gloves for other price lists published for a period

of more than fifteen years to and including the March 1942 price list.

2. *Variations in price differences from one price list to the next are entirely consistent with the uniform operation of the practice.*

As we have already stated, the fact that the difference between the selling prices of two glove styles in the same class on *one* price list may not be the same as the difference between the selling prices of the same styles on a *later* price list does not indicate any lack of uniformity or precision in applying "in-line" pricing methods in making up the selling prices for either list.

Such changes in price differences will occur, between the issuance of one price list and the next, where the cent-amount of a differential representing a particular feature, as applied in making up the selling prices for the first list, is not the same as the cent-amount of that differential as it is applied in making up the selling prices of the next list.

The correctness of this statement may be made clearer by specific examples of the effect of a change, from one price list to the next, in the cent-amount of a single differential upon price differences between styles in the same class. On Schedule A (R., 45), which is one of the schedules listing the 112 styles claimed by respondent to have been sold at over-ceiling prices, appear four style numbers which are constructed with "Grain Leather (Buck tan)" material. These are Style Nos. 840P, 849P, 928P and 946P (Schedule A, left hand column; R., 45). As shown by that Schedule the increase in price between the December 1941 and March 1942 lists was 75¢ in the case of each of those four styles. On the other hand, the price of Style No. 326, appearing in the right hand column opposite each of those four styles, was increased between the December and the March lists by only 50¢.

The breakdown of the selling prices, as published in the December list and as published in the later March list, for all five of those styles is as follows:

BREAKDOWN OF DECEMBER 1941 AND MARCH 1942 PUBLISHED SELLING PRICES OF FIVE GLOVE STYLES SHOWING THE RESULT OF A CHANGE IN THE CENT-AMOUNT OF A DIFFERENTIAL REPRESENTING A CONSTRUCTION FEATURE UPON PRICE DIFFERENCES BETWEEN THE SELLING PRICES OF GLOVES CONSTRUCTED WITH THAT FEATURE AND A GLOVE CONSTRUCTED WITHOUT THAT FEATURE.

Common Characteristics of Class:	Dec. 1, '41 Charge (per dz. pr.)	Mar. 17, '42 Charge (per dz. pr.)	Style No. 326* Dec.'41	Style No. 326* Mar.'42	Style No. 928P* Dec.'41	Style No. 928P* Mar.'42	Style No. 946P* Dec.'41	Style No. 946P* Mar.'42	Style No. 840P* Dec.'41	Style No. 840P* Mar.'42	Style No. 849P* Dec.'41	Style No. 849P* Mar.'42
Leather Palm and Flannel Back (tipped fingers):												
2nd Grade Shoulder Split Leather	$3.50	$4.00	$3.50	$4.00	$3.50	$4.00	$3.50	$4.00	$3.50	$4.00	$3.50	$4.00
DIFFERENTIALS	**Cent Amount Per Doz. Pair Dec. 1, 1941**	**Mar. 17, 1942**										
ALTERNATE LEATHERS:												
Side Split	$1.15	$1.15	$1.15	$1.15	—	—	—	—	—	—	—	—
Grain Leather (Buck tan) with full thumb	**$2.15**	**$2.40‡**	—	—	$2.15	$2.40	$2.15	$2.40	$2.15	$2.40	$2.15	$2.40
ALTERNATE CUFFS:												
Safety Cuff (narrow band), elastic back	$ .85	$ .85	—	—	$ .85	$ .85	—	—	—	—	—	—
Safety Cuff (wide band), elastic back	$1.10	$1.10	—	—	—	—	—	—	$1.10	$1.10	—	—
GAUNTLET:												
Waterproof Cufflex, elastic back	$1.10	$1.10	$1.10	$1.10	—	—	$1.10	$1.10	—	—	—	—
Two-piece Waterproof Cufflex, elastic back	$1.35	$1.35	—	—	—	—	—	—	—	—	$1.35	$1.35
ADDITIONAL FEATURES:												
Grain Leather Knuckle-strap	$ .50	$ .50	—	—	—	—	—	—	$ .50	$ .50	$ .50	$ .50
Continuous Heel	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25
Full Leather Thumb (split)	$ .25	$ .25	$ .25	$ .25	—	—	—	—	—	—	—	—
Full Leather First Finger	$ .25	$ .25	—	—	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25	$ .25
3/4 Leather Back	$ .75	$ .75	$ .75	$ .75	—	—	—	—	—	—	—	—
			$7.00	$7.50	$7.00	$7.75	$7.25	$8.00	$7.75	$8.50	$8.00	$8.75
Differences in price from Style No. 326:					**$ .00**	**$ .25**	**$ .25**	**$ .50**	**$ .75**	**$1.00**	**$1.00**	**$1.25**

*These five style numbers appear both on Schedule A (R., 45) and on the Chart at end of this Reply Brief.

‡This increase in differential was due to unusual increase in expense of grain leather as compared to side split leather construction (R., 43-Note(4)).

Thus, the 25¢ increase, between the issuance of the two price lists, in the cent-amount of the "Grain Leather (Buck tan)" differential from $2.15 to $2.40 had the results indicated in the bottom line of figures on the foregoing tabulation: The *price difference* between the selling price of No. 326 and each of the other four styles appearing in the December list varied from the price differences between the same styles, as reflected in the March list, by 25¢. These are the "variations" referred to by the lower court and relied upon by it in support of its finding that there was a lack of uniformity and precision in the operation of "in-line" pricing methods.

It is true that the cent-amounts of the differentials representing construction features have, during the history of "in-line" pricing in the glove industry, in the main remained the same. The fact that such changes occur with relative infrequency between the issuance of one price list and the next is demonstrated by the evidence in this case. There was an increase of approximately 10% in the over-all selling price of *every one* of petitioner's gloves between the December published list and the March published list. Yet, of the 167 styles priced on both lists, the evidence discloses that the *price differences* between the selling prices of 139 styles and of other styles in the same class remained exactly the same on the March list as they were on the December list. Thus, the differentials which were changed between the issuance of those price lists were so few that *price differences* were altered in the cases of only 28 of the 167 styles priced on both lists.

In any event, however, it has never been contended that once the cent-amount of a differential has been fixed, ther throughout the history of the glove industry, it may never change. Moreover, since the issuance by the lower court of the amendment to its original opinion, the respondent has not contended that, in order for "in-line" pricing to be a

practice within the protection of Section 2 (h), the cent-amounts of differentials making up the in-line structure must be "forever unvarying." As pointed out by respondent in his brief (Page 13): "The court's final opinion * * * makes no reference to 'unvarying' (R. 139-140)." But it is these same occasional changes from one price list to the next in the cent-amounts of differentials representing construction features, which have resulted in *variations* in *price differences* from one price list to the next. And it is upon these *variations* in *price differences* that the court still relies, in its final opinion. It is upon this ground alone that the court bases its finding that "in-line" pricing is not a "practice" and that it was not "established" either as a practice or as a "means" or "aid to distribution" in the glove industry.

It is upon this ground alone that any claim has been made that the establishment of ceiling prices according to "in-line" pricing methods could lead to circumvention or evasion of the Price Administrator's Regulation. But, as has been demonstrated, the standards for determining the correctness of selling prices for gloves are just as definite and certain under the "in-line" methods which petitioner is asking the court to protect as are those which the respondent seeks to employ.

Concluding Statement.

In this proceeding petitioner seeks protection of a practice which, as exemplified by the Chart at the end of this Reply Brief, is precise in its application and uniform in its operation. The respondent has been furnished, in this proceeding, with the standards which will enable him to determine with absolute precision the correctness of prices claimed to have been fixed according to those standards.

Petitioner included in its protest (Schedules A through

D; R., 41-51) information regarding the 112 styles claimed by respondent in his enforcement suit to have been sold by petitioner at over-ceiling prices. Respondent has already been satisfied, through that information furnished in this proceeding, that the selling prices of 87 of those styles were correctly priced according to "in-line" methods. He questions the prices of the other 25 of the 112 styles only because there are *variations* in *price differences,* from one list to the next, between the selling prices of those styles and other styles in their respective classes of gloves. But this is not the forum for the trial of his entire enforcement suit against petitioner through a determination here of the correctness, under "in-line" standards, of petitioner's prices on the other 25 styles. Given the standards which the respondent may employ, and employ with precision, this Court is not concerned with the evidence which may be presented to the enforcement court regarding the correctness of those prices.

The respondent can readily determine in his enforcement suit whether, as petitioner claimed in its protest, at least 17 of the 25 styles, involving such variations in price differences from one price list to the next, occurred as a result of and in conformity with the correct application of "in-line" standards. He can determine with absolute precision what are the correct "in-line" selling prices for the other 8 of those 25 styles, as well as the amounts of any overceiling charges which may have resulted through their sale.

The question for determination in this proceeding is whether "in-line" pricing is or is not a practice, or a "means" or an "aid to distribution" "established" in the glove industry; and if it is, whether the respondent still may compel a change in that practice in order to prevent "circumvention" or "evasion" of the provisions

of his regulation. Since the standards of "in-line" pricing, as contended for here, are uniform in operation, the practice of "in-line pricing" necessarily falls within the purview of Section 2(h) of the Act. Since those standards, as presented here, furnish the respondent with an exact and workable means of preventing circumvention and evasion, the practice does *not* fall within the exception provided for in that section. Once those standards have been recognized, the place to apply them is in the enforcement court.

Accordingly, it is respectfully urged that a writ of certiorari should issue to review the judgment and decision of the Emergency Court of Appeals.

Respectfully submitted,

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C I

Example Concerning I

BREAKDOWN OF SELLING PRICES
For Styles Within Single

Common Characteristics of the Class:
LEATHER PALM AND FLANNEL BACK,
with leather tipped fingers

LEATHER PALM AND FLANNEL BACK (tipped fingers)		Style No.	#33	#28
2nd Grade Shoulder Split Leather...	Am't Charged Dec. 1, 1941 (per dozen) $3.50		$3.50	$3.5

DIFFERENTIALS

Description of Material & Construction Features.	Cent Am't (per doz. pr.)			
ALTERNATE LEATHERS:				
2nd Grade Shoulder Split	$ .00	.00	—	
1st Grade Shoulder Split	.40	—	.4	
Side Split	1.15	—	—	
Cream Grain Leather, Hob Nob	1.90	—	—	
Grain Leather (Buck tan), with full thumb	2.15	—	—	
ALTERNATE CUFFS:				
Slip-on (no cuff), elastic back	.10	—	—	
Knit-wrist	.35	.35	.3	
Safety Cuff (narrow band), elastic back	.85	—	—	
Safety Cuff (wide band), elastic back	1.10	—	—	
Gauntlet Styles:				
Waterproof Cufflex, elastic back	1.10	—	—	
Two-piece Waterproof Cufflex, elastic back	1.35	—	—	
ADDITIONAL FEATURES:				
Knuckle Strap (split)	.25	—	—	
Grain Leather Knuckle Strap	.50	—	—	
Continuous Heel	.25	—	—	
Thumb Strap	.25	—	—	
Full Leather Thumb (split)	.25	—	—	
Full Leather First Finger	.25	—	—	
¾ Leather Back	.75	—	—	
Lumber-Jack Pattern, knit wrist	1.35	—	—	
E-Z Back Pattern	1.00	—	—	
Fleece Lining and Roll Binding	1.35	—	—	
TOTALS (per dozen pair)		$3.85	$4.25	
Dec. 1, 1941 Published Selling Prices (per dozen pair) (Record, pp. 23-25)		$3.85	$4.25	
Catalog Page (Record, p. 38)		19	18	

Style No.	#33	#285	#3102	#3132	#3162	#3130	#38	#3296	#3160	#388P	#39
	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
	.00	—	—	—	—	—	—	—	—	—	—
	—	.40	.40	.40	.40	.40	—	—	.40	—	—
	—	—	—	—	—	—	1.15	1.15	—	—	1.15
	—	—	—	—	—	—	—	—	—	1.90	—
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	—	—	—	.10	—	—	—
	.35	.35	.35	—	—	—	.35	—	—	.35	—
	—	—	—	.85	—	.85	—	—	—	—	—
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	1.10	—	—	—	1.10	—	—
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	—	.25	—	—	.25	—	—
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	—	.25	—	—	.25	—	.25
	—	—	—	—	—	—	—	—		—	—
	—	—	—	—	—	—	—	.25	—	—	—
	—	—	—	—	—	—	.25	.25	—	—	—
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	—	—	—	—	—	—	1.35
	—	—	—	—	—	—	—	—	—	—	—
	—	—	—	—	—	—	—	—	—	—	—
	$3.85	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25
	$3.85	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25
	19	18	16	16	16	16	16	18	16	20	17

HART

December 1, 1941 Published Prices

S FIXED UNDER "IN-LINE" PRICING METHODS
e Class of Leather Palm Glove Group

#389P	#420	#3492	#236	#239	#390P	#419	#944P	#3398	#24	#224	#235
$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
—	1.15	1.15	1.15	1.15	—	1.15	—	1.15	1.15	1.15	1.15
1.90	—	—	—	—	1.90	—	—	—	—	—	—
—	—	—	—	—	—	—	2.15	—	—	—	—
—	—	.10	—	—	—	—	—	.10	—	—	—
—	—	—	—	—	—	—	.35	—	—	—	—
.85	.85	—	—	—	—	—	—	—	—	—	—
—	—	—	1.10	—	—	—	—	—	1.10	1.10	—
—	—	—	—	—	1.10	1.10	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	1.35
—	.25	.25	.25	—	—	.25	—	.25	.25	.25	.25
—	—	—	—	—	—	—	—	—	—	—	—
—	.25	—	.25	.25	—	.25	.25	.25	.25	.25	.25
—	—	—	—	.25	—	—	—	—	—	—	—
—	.25	.25	.25	—	—	.25	—	—	.25	.25	.25
—	—	—	—	—	—	—	.25	—	.25	.25	—
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	1.35	—	—	—	—	—	—	—
—	—	1.00	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	1.35	—	—	—
$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$6.75	$6.75	$6.75
$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$6.75	$6.75	$6.75
20	17	18	17	17	20	17	20	18	17	17	17

ublished Prices

'IN-LINE" PRICING METHODS
lm Glove Group

236	#239	#390P	#419	#944P	#3398	#24	#224	#235	#327	#29	#229	#3
3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.
—	—	—	—	—	—	—	—	—	—	—	—	-
—	—	—	—	—	—	—	—	—	—	—	—	-
1.15	1.15	—	1.15	—	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.
—	—	1.90	—	—	—	—	—	—	—	—	—	-
—	—	—	—	2.15	—	—	—	—	—	—	—	-
—	—	—	—	—	.10	—	—	—	—	—	—	-
—	—	—	—	.35	—	—	—	—	—	—	—	-
—	—	—	—	—	—	—	—	—	.85	—	—	-
.10	—	—	—	—	—	1.10	1.10	—	—	—	—	-
—	—	1.10	1.10	—	—	—	—	—	—	—	—	1.
—	—	—	—	—	—	—	—	1.35	—	1.35	1.35	-
.25	—	—	.25	—	.25	.25	.25	.25	—	.25	.25	-
—	—	—	—	—	—	—	—	—	—	—	—	-
.25	.25	—	.25	.25	.25	.25	.25	.25	.25	.25	.25	.
—	.25	—	—	—	—	—	—	—	—	—	—	-
.25	—	—	.25	—	—	.25	.25	.25	.25	.25	.25	.
—	—	—	—	.25	—	.25	.25	—	.75	—	—	-
—	1.35	—	—	—	—	—	—	—	—	—	—	-
—	—	—	—	—	—	—	—	—	—	—	—	-
—	—	—	—	—	1.35	—	—	—	—	—	—	-
50	$6.50	$6.50	$6.50	$6.50	$6.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.0
50	$6.50	$6.50	$6.50	$6.50	$6.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.0
17	17	20	17	20	18	17	17	17	17	17	17	

#29	#229	#326	#928P	#946P	#790	#3432	#840P	#789	#3462	#849P
3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
1.15	1.15	1.15	—	—	1.15	1.15	—	1.15	1.15	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	2.15	2.15	—	—	2.15	—	—	2.15
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	.85	—	—	—	—	—	—	—
—	—	—	—	—	1.10	1.10	1.10	—	—	—
—	—	1.10	—	1.10	—	—	—	—	—	—
1.35	1.35	—	—	—	—	—	—	1.35	1.35	1.35
.25	.25	—	—	—	.25	.25	—	.25	.25	—
—	—	—	—	—	—	—	.50	—	—	.50
.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25
—	—	—	—	—	—	—	—	—	—	—
.25	.25	.25	—	—	.25	.25	—	.25	.25	—
.25	.25	—	.25	.25	—	—	.25	—	—	.25
—	—	.75	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	1.00	1.00	—	1.00	1.00	—
—	—	—	—	—	—	—	—	—	—	—
7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
17	17	17	20	21	18	19	20	18	19	20

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 181

WELLS LAMONT CORPORATION, A CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR, AND
JAMES G. ROGERS, ACTING ADMINISTRATOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO UNITED STATES EMERGENCY COURT OF APPEALS.

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CHESTER BOWLES, PRICE ADMINISTRATOR, AND
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO UNITED STATES EMERGENCY COURT OF APPEALS.

Petitioner requests reconsideration of its petition for a writ of certiorari to the United States Emergency Court of Appeals, which this Court denied on October 8, 1945.

This Court is most earnestly urged to examine carefully the brief statement, given below, of petitioner's reasons for reconsideration. We sincerely believe that these rea-

sons demonstrate that it was impossible, as a matter of law, for the lower court to have been correct in reaching the conclusions upon which it based its dismissal of petitioner's complaint.

Petitioner's complaint was dismissed on two grounds:

First. The practice of "in-line" pricing in the glove industry falls outside the scope of Section 2 (h) of the Emergency Price Control Act of 1942.[1]

Second. The use of the practice in establishing ceiling prices for gloves during March, 1942, would lead to circumvention and evasion of the Price Administrator's regulation.

The first ground was based solely upon the court's conclusion that there was a lack of consistency and uniformity in the application of the practice. But the court based this conclusion upon facts found which, *on their face*, had no possible bearing upon the question of consistency or uniformity of application of the practice.

The second ground was based by the court upon a finding which was made by the respondent Price Administrator in his opinion accompanying the denial of petitioner's protest (R. 60-61). For the respondent to have been correct in that finding, however, is a mathematical impossibility.[2]

---

[1] So far as relevant, Section 2(h) of the Emergency Price Control Act of 1942 (U. S. C. A., Title 50, App. Sec. 902 (h)) reads:

"The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution established in any industry, * * * except * * * to prevent circumvention or evasion of any regulation, * * * or requirement under this Act."

[2] No mention of the "finding" was made by the court in its original opinion. There has never been any explanation by the Price Administrator as to why circumvention or evasion would result; nor is there any discussion at all by the court either in its original or amended opinion on the question. On the other hand, the contentions of petitioner in regard to it have never, throughout this case, been answered by anyone.

Attached to this petition is a Chart reproduced as it appeared at the end of petitioner's reply brief filed with this Court. This Chart was made up from evidence in this case for the purpose of showing graphically—and in further confirmation of petitioner's sworn statements—the results of the application of "in-line" pricing methods. The Chart is a breakdown of the selling prices for styles within a single class of leather palm gloves, fixed under "in-line" pricing methods and published in petitioner's December 1, 1941, price list.

The Chart confirms graphically the fact that "in-line" pricing embraces in its application two basic and unvarying principles:

First, it operates with respect to a single price list only;

Second, the cent-amount of each differential representing a particular construction feature is applied uniformly and unvaryingly across the selling prices of each class of gloves on that single list.

The court's conclusion of lack of consistency and uniformity in the application of the practice was based upon its finding that price differences between the selling prices of glove styles appearing "* * * in the December, 1941, price list varied from those in the March, 1942, list in many particulars" (R., 139). But the fact that price differences between the selling prices of glove styles in *one* list vary from those in *another* list can have no possible bearing on the question of consistency or uniformity of application. The practice still may operate, and does operate, consistently and uniformly across the selling prices on *each* separate price list.

Accordingly, the lower court's conclusion is, *on its face*, unsupported by its own findings of fact.

We have stated that the use of "in-line" pricing cannot

possibly lead to circumvention or evasion of the Price Administrator's regulation. This is clearly demonstrated by the Chart. In order to determine the correctness of any March ceiling price, the Price Administrator needs only to do two things: first, to identify the glove style delivered during March; and, second, to add to or substract from its delivered price the cent-amount of the differential applicable, in the March list, to each added or omitted construction feature of the glove on which the "in-line" ceiling price is sought.

Accordingly, a determination of the correctness of any of petitioner's March prices involves the use of simple arithmetic—nothing more; and circumvention or evasion is *mathematically impossible.*

Concluding Statement.

It is submitted that a refusal by this Court to reconsider and grant petitioner a writ of certiorari will result in a gross injustice. It will deny petitioner a review of a determination by the lower court which is patently unsupported by the court's own findings. It will uphold a completely naked finding of the Price Administrator, and will deny petitioner protection against sheer administrative absolutism.

The position taken by petitioner in this case had the support of respondent Price Administrator's own officials, upon whose interpretation of the provisions of the regulation and of the Act this petitioner relied in good faith. That interpretation was later disclaimed by the Price Administrator on the ground that it was not binding upon him. As a result, petitioner and other manufacturers in the glove industry have pending against them suits for treble damages, brought by the Price Administrator, which may result in judgments against them totalling many hundreds of thousands of dollars.

Consequently, the issuance of a writ of certiorari to review this case is essential in the interests of simple justice, as well as for the protection of the legal rights of petitioner and others in the glove industry.

Respectfully submitted,

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Counsel for Petitioner.

CHA

Example Concerning Decemb

BREAKDOWN OF SELLING PRICES FIXE
For Styles Within Single Class o

Common Characteristics of the Class:
LEATHER PALM AND FLANNEL BACK,
with leather tipped fingers

LEATHER PALM AND FLANNEL BACK (tipped fingers)		Style No.	#33	#285	#3102	#3132	#3162	#3130	#38	#3296	#3160	#388P	#39	#389P	
2nd Grade Shoulder Split Leather...	Am't Charged Dec. 1, 1941 (per dozen) $3.50		$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	

DIFFERENTIALS

Description of Material & Construction Features.	Cent Am't (per doz. pr.)													
ALTERNATE LEATHERS:														
2nd Grade Shoulder Split	$ .00	.00	—	—	—	—	—	—	—	—	—	—	—	
1st Grade Shoulder Split	.40	—	.40	.40	.40	.40	.40	—	—	.40	—	—	—	
Side Split	1.15	—	—	—	—	—	—	1.15	1.15	—	—	1.15	—	
Cream Grain Leather, Hob Nob	1.90	—	—	—	—	—	—	—	—	—	1.90	—	1.90	
Grain Leather (Buck tan), with full thumb	2.15	—	—	—	—	—	—	—	—	—	—	—	—	
ALTERNATE CUFFS:														
Slip-on (no cuff), elastic back	.10	—	—	—	—	—	—	—	.10	—	—	—	—	
Knit-wrist	.35	.35	.35	.35	—	—	—	.35	—	—	.35	—	—	
Safety Cuff (narrow band), elastic back	.85	—	—	—	.85	—	.85	—	—	—	—	—	.85	
Safety Cuff (wide band), elastic back	1.10	—	—	—	—	—	—	—	—	—	—	—	—	
Gauntlet Styles:														
Waterproof Cufflex, elastic back	1.10	—	—	—	—	1.10	—	—	—	1.10	—	—	—	
Two-piece Waterproof Cufflex, elastic back	1.35	—	—	—	—	—	—	—	—	—	—	—	—	
ADDITIONAL FEATURES:														
Knuckle Strap (split)	.25	—	—	—	—	—	.25	—	—	.25	—	—	—	
Grain Leather Knuckle Strap	.50	—	—	—	—	—	—	—	—	—	—	—	—	
Continuous Heel	.25	—	—	—	—	—	.25	—	—	.25	—	.25	—	
Thumb Strap	.25	—	—	—	—	—	—	—	—	—	—	—	—	
Full Leather Thumb (split)	.25	—	—	—	—	—	—	—	.25	—	—	—	—	
Full Leather First Finger	.25	—	—	—	—	—	—	.25	.25	—	—	—	—	
¾ Leather Back	.75	—	—	—	—	—	—	—	—	—	—	—	—	
Lumber-Jack Pattern, knit wrist	1.35	—	—	—	—	—	—	—	—	—	—	1.35	—	
E-Z Back Pattern	1.00	—	—	—	—	—	—	—	—	—	—	—	—	
Fleece Lining and Roll Binding	1.35	—	—	—	—	—	—	—	—	—	—	—	—	
TOTALS (per dozen pair)		$3.85	$4	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25	$6.25	$
Dec. 1, 1941 Published Selling Prices (per dozen pair) (Record, pp. 23-25)		$3.85	$4	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25	$6.25	$
Catalog Page (Record, p. 38)		19		18	16	16	16	16	16	18	16	20	17	20	

CHART

Concerning December 1, 1941 Published Prices

ING PRICES FIXED UNDER "IN-LINE" PRICING METHODIODS
Within Single Class of Leather Palm Glove Group

#388P	#39	#389P	#420	#3492	#236	#239	#390P	#419	#944P	#3398	3398	#24	#224	#235	#327	#29	#229	#326	#928P	#946P	#790	#3432	#84
$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	1.15	—	1.15	1.15	1.15	1.15	—	1.15	—	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	—	—	1.15	1.15	—
1.90	—	1.90	—	—	—	—	1.90	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	2.15	—	—	—	—	—	—	—	—	—	2.15	2.15	—	—	2.
—	—	—	—	.10	—	—	—	—	—	.10	.10	—	—	—	—	—	—	—	—	—	—	—	—
.35	—	—	—	—	—	—	—	—	.35	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	.85	.85	—	—	—	—	—	—	—	—	—	—	—	.85	—	—	—	.85	—	—	—	—
—	—	—	—	—	1.10	—	—	—	—	—	—	1.10	1.10	—	—	—	—	—	—	—	1.10	1.10	1.
—	—	—	—	—	—	—	1.10	1.10	—	—	—	—	—	—	—	—	—	1.10	—	1.10	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	1.35	—	1.35	1.35	—	—	—	—	—	—
—	—	—	.25	.25	.25	—	—	.25	—	.25	.25	.25	.25	.25	—	.25	.25	—	—	—	.25	.25	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	.25	—	.25	—	.25	.25	—	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	—
—	—	—	—	—	—	.25	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	.25	.25	.25	—	—	.25	—	—	—	.25	.25	.25	.25	.25	.25	.25	—	—	.25	.25	—
—	—	—	—	—	—	—	—	—	.25	—	—	.25	.25	—	—	.25	.25	—	.25	.25	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	.75	—	—	.75	—	—	—	—	—
—	1.35	—	—	—	—	1.35	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	1.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1.00	1.00	—
—	—	—	—	—	—	—	—	—	—	1.35	.35	—	—	—	—	—	—	—	—	—	—	—	—
$5.75	$6.25	$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.7
$5.75	$6.25	$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.7
20	17	20	17	18	17	17	20	17	20	18	18	17	17	17	17	17	17	17	20	21	18	19	2

327	#29	#229	#326	#928P	#946P	#790	#3432	#840P	#789	#3462	#849P
.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
.15	1.15	1.15	1.15	—	—	1.15	1.15	—	1.15	1.15	—
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	2.15	2.15	—	—	2.15	—	—	2.15
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
.85	—	—	—	.85	—	—	—	—	—	—	—
—	—	—	—	—	—	1.10	1.10	1.10	—	—	—
—	—	—	1.10	—	1.10	—	—	—	—	—	—
—	1.35	1.35	—	—	—	—	—	—	1.35	1.35	1.35
—	.25	.25	—	—	—	.25	.25	—	.25	.25	—
—	—	—	—	—	—	—	—	.50	—	—	.50
.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25
—	—	—	—	—	—	—	—	—	—	—	—
.25	.25	.25	.25	—	—	.25	.25	—	.25	.25	—
—	.25	.25	—	.25	.25	—	—	.25	—	—	.25
.75	—	—	.75	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	1.00	1.00	—	1.00	1.00	—
—	—	—	—	—	—	—	—	—	—	—	—
.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
17	17	17	17	20	21	18	19	20	18	19	20